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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

1 NOEMIA CARVALHO, on behalf of herself) Case No. 5:08-cv-01317-JF-HRL
2 and other similarly situated people,)
3 Plaintiff,) **REPLY OF DEFENDANT TRANSUNION**
4 vs.) **LLC IN SUPPORT OF MOTION TO**
5 CREDIT CONSULTING SERVICES, INC.,) **COMPEL PRODUCTION OF**
6 dba CCS, EQUIFAX CREDIT) **DOCUMENTS**
7 INFORMATION SERVICES, LLC,) Date: June 17, 2008
8 EXPERIAN INFORMATION SOLUTIONS,) Time: 10:00 a.m.
9 INC., TRANS UNION LLC, and DOES 1-50,) Crtrm: 2
10 inclusive,)
11 Defendants.)
12 _____)

I. INTRODUCTION

Plaintiff has no excuse for failing to produce the documents TransUnion seeks via the instant Motion.¹ Quite simply, the law requires Plaintiff to produce the documents, and Plaintiff provides no explanation for not doing so. Critically, Plaintiff's counsel represented to TransUnion's counsel that all documents supporting Plaintiff's claims had been produced. It was only after TransUnion received a subsequent production, courtesy of Experian's counsel, that TransUnion discovered that Plaintiff had not, in fact, produced all documents.

Plaintiff suggests that TransUnion may obtain the documents from Experian, but it is Plaintiff's obligation, not Experian's, to provide a complete production of documents, and this is not a set of documents where the parties collectively agreed that Experian would Bates label, copy and distribute.

Moreover, Plaintiff’s argument that TransUnion did not meet the “terms” for production is absurd and inappropriate. As an initial matter, TransUnion was not aware of the “terms” until Plaintiff included them in her Opposition to the Motion. TransUnion certainly would have agreed to pay any copying costs, even though it has not requested the same of Plaintiff.²

Finally, Plaintiff's timing argument is frivolous because there is no time limit for a motion to compel where a party fails to produce documents that the party agreed to produce in his or her responses to an inspection demand. The Court should not countenance Plaintiff's evasion of clear discovery obligation. The Motion should be granted.

II. ARGUMENT

A. Plaintiff Is Obligated To Produce The Documents At Issue.

The law requires Plaintiff to provide all parties with copies of any documents she produces in this case. See Cal. Civ. Proc. Code § 2031.260(a). Plaintiff's own attorney has conclusively asserted that Plaintiff has produced all documents. (Supplemental Declaration of Brian C. Frontino ("Supp. Frontino Decl.") ¶ 2, Ex. A.) In failing to produce the documents at issue to TransUnion, Plaintiff brazenly disregards the fundamental policy of full and complete discovery as embodied in

¹ Terms used herein are as defined in the Motion unless otherwise noted.

² Concurrently with service of this Reply on Plaintiff, TransUnion tendered a check in the amount of \$15.00, which is more than sufficient for the 100 pages of documents requested by TransUnion.

1 both federal and state discovery statutes and rules. Plaintiff's argument that the "documents are
 2 equally available" to TransUnion from Experian simply ignores Plaintiff's obligation to assure full
 3 and complete discovery in response to an opposing party's request. TransUnion is not required to
 4 rely on Experian to ensure Plaintiff's discovery responses are complete. Of course, Plaintiff
 5 provides no authority for her position in the Opposition. Obviously, Plaintiff must provide
 6 TransUnion with copies of the documents, and she should be compelled to do so.

7 **B. Plaintiff's Argument Regarding The Terms Of Production Is Specious Because
 8 TransUnion Was Not Aware Of Plaintiff's Supposed "Terms."**

9 In the Opposition, Plaintiff argues that TransUnion is not entitled to the documents it seeks
 10 because it supposedly did not meet Plaintiff's "terms under which production would be made."
 11 (Opposition at p. 2.) Plaintiff's statement is astounding. Plaintiff never communicated the
 12 supposed "terms" to TransUnion, even during the meet and confer process leading up to this
 13 Motion. TransUnion only became aware of the "terms" upon receipt of Plaintiff's Opposition to
 14 this Motion and has since tendered Plaintiff's counsel a check for copying costs. Accordingly, the
 15 Court should disregard Plaintiff's hollow argument regarding the "terms" of production and compel
 16 her to produce the documents, especially now that TransUnion has complied with her "terms."

17 **C. There Is No Time Limit For Moving To Compel Production Of Underlying
 18 Documents, Only Responses To An Inspection Demand.**

19 Plaintiff attempts to distract the Court from her blatant failure to comply with her discovery
 20 obligations by suggesting that TransUnion's Motion is untimely. Plaintiff's argument falls flat for
 numerous reasons.

21 First, where, as here, a party fails to produce documents identified in responses to an
 22 inspection demand, there is no time limit to file a motion to compel production of the underlying
 23 documents themselves that the responding party agreed to produce in his or her responses to the
 24 inspection demand. Cal. Civ. Proc. Code § 2031.320(a) ("If a party filing a response to a demand
 25 for inspection ... thereafter fails to permit the inspection in accordance with that party's statement
 26 of compliance, the party demanding the inspection may move for an order compelling
 27 compliance"). The 45-day time limit applies to the formal written responses and objections to
 28 discovery requests. Cal. Civ. Proc. Code § 2031.310 ("On receipt of a response to an inspection

1 demand, the party demanding an inspection may move for an order compelling further response to
 2 the demand if the demanding party deems that any of the following apply").³ Where the
 3 written response commits to produce documents, they must be produced, and there is no time limit
 4 for a motion to compel. Plaintiff responded to TransUnion's Requests for Production of
 5 Documents on March 30, 2007, agreeing to produce all documents supporting her claims in this
 6 action, and supposedly produced all such documents (nos. 1-196) on March 19, 2007. (Supp.
 7 Frontino Decl. ¶¶ 3-4, Exs. B, C.) TransUnion is not moving to compel Plaintiff to further respond
 8 pursuant to Code of Civil Procedure Section 2031.310; rather, it is moving to compel Plaintiff's
 9 production of documents withheld pursuant to Code of Civil Procedure Section 2031.320.

10 Second, as a matter of equity, given the routine nature of the issue, TransUnion reasonably
 11 expected to resolve it through the meet-and-confer process. Amazingly, Plaintiff's counsel
 12 stubbornly refused to produce the 100 pages. TransUnion's counsel repeatedly attempted to
 13 convince Plaintiff's counsel to produce the documents and gave Plaintiff every opportunity to do so
 14 without the Court's intervention, but Plaintiff refused. TransUnion regrets that it has been forced
 15 to file the Motion, but Plaintiff's obstinacy requires it. She must be compelled to produce the
 16 documents at issue.

17 III. CONCLUSION

18 For the foregoing reasons, TransUnion respectfully requests that the Court grant the Motion
 19 in its entirety.

20 Dated: June 3, 2008

21 STROOCK & STROOCK & LAVAN LLP
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 STEPHEN J. NEWMAN
 BRIAN C. FRONTINO

23 By: _____ /s/ Brian C. Frontino
 24 Brian C. Frontino

25 Attorneys for Defendant
 26 TRANSUNION LLC

27
 28 ³ In addition, TransUnion notes for the Court that there is no time limit for filing a motion to
 compel under the Federal Rules of Civil Procedure.